

Departmental Comments

Congressional Affairs

Activities of the First Session of the 91st Congress Relating to International Law and Foreign Relations

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The 91st Congress convened on January 3, 1969. The first session adjourned on December 23, and was one of the longest sessions in history.

In the area of foreign affairs, some expiring legislation was continued, new legislation was enacted and eight treaties were approved. Of almost equal importance, the Senate adopted two resolutions, one reasserting the partnership of the Congress and the President in the making of national commitments to foreign governments, and the other defining the implications of the recognition of foreign governments.

Following are the outstanding accomplishments of the session:

The Nuclear Non-proliferation Treaty

On February 3, President Nixon sent a message to the Senate urging approval of the Non-proliferation Treaty and asking for "prompt and positive action" to advance the administration's policy of negotiation rather than confrontation with the U.S.S.R. The treaty was the product of over four years of negotiation by some eighteen nations at the Geneva Disarmament Conference, was approved by the U.N. General Assembly on June 12, 1968, was signed by the United States and sixty other countries on July 1, 1968, and was submitted to the Senate on July 9. The Foreign Relations Committee reported the treaty favorably on September 26, but Majority Leader Mike Mansfield decided not to call it up for a Senate vote. Opposition developed following the Soviet invasion of Czechoslovakia, and President Nixon in his campaign opposed ratification at that time. After a controversy over the deployment of the Anti-ballistic Missile

System, which some members thought might violate Article VI pledging the nuclear signatories to undertake negotiations in good faith on arms limitation, the Foreign Relations Committee unanimously approved the treaty. It was favorably reported on March 6.

Four "understandings" and two "reservations" were proposed and rejected during the floor debate. One of the latter, proposed by Senator Sam J. Ervin, Jr., was that the treaty did not obligate a signatory to defend non-nuclear states against aggression because of U.N. Resolution 255 of June, 1968, which pledged the United States, Great Britain and the U.S.S.R. to seek immediate Security Council action to assist non-nuclear members threatened with nuclear attack.

On March 28, the Senate approved the treaty by a vote of 83 to 15. (Ex. H, 90-2).

The Preamble and eleven articles ban the spread of nuclear weapons, provide safeguard arrangements and ensure non-discriminatory access to peaceful uses of nuclear energy.

Articles I and II prohibit nuclear signatories from transferring "to any recipient whatsoever" either nuclear weapons or any other nuclear explosive device. They are obliged not to transfer, control, or to assist, encourage, or induce non-nuclear states to manufacture or acquire control over such weapons.

By Article II signatory states not having nuclear weapons undertake not to receive them or acquire control over them, or to manufacture or receive any aid in their manufacture.

Article III, one of the most controversial, obligates non-nuclear states to accept safeguards "as set forth in an agreement to be negotiated with the International Atomic Energy Commission according to its statute and the agency's safeguard system." Negotiations are to begin within 180 days of the entry into force of the treaty, with agreements scheduled to take effect not later than 18 months after initiation of negotiations. The nuclear states are not liable to safeguards.

Article IV asserts the right of signatories to develop, produce and use nuclear energy for peaceful purposes. It obliges all signatories to facilitate the exchange of equipment, materials and scientific and technical information.

Article V is designed to compensate non-nuclear signatories for their abstention pursuant to Articles II and III. "Appropriate measures" are to be taken to ensure that non-nuclear states have access to peaceful application of nuclear explosives on a non-discriminatory basis, the cost to be as

low as possible with no charge for research and development. The explosives are to be obtained through an appropriate international body to be set up in the future or through bi-lateral arrangements. Actual ownership and control of devices are to remain with the nuclear state involved.

Article VI obligates each of the parties to pursue negotiations in good faith on effective measures relating to cessation of the nuclear arms race at an early date and to nuclear disarmament under strict and effective international control.

Article VII permits states to conclude regional treaties to assure total absence of nuclear weapons in their territories.

Article VIII provides for amendment and for treaty review by a conference in Geneva after five years and thereafter every five years if a majority agrees.

Article IX opens the treaty to signature by all states and provides that it enter in force after the instrument of ratification is deposited by the United States, Great Britain, the U.S.S.R. and forty other signatories. A nuclear weapon state is defined as one which has manufactured and exploded a nuclear weapon or device prior to January 1, 1967.

Article X permits a state, after three months notice, to withdraw from the treaty if it decides that "extraordinary events" were jeopardizing its "supreme interests." A conference is to be held in twenty-five years to decide whether the treaty shall be continued in force indefinitely, or shall be extended, the decision to be made by a majority.

Article XI provides that the English, Russian, French, Spanish and Chinese texts shall be equally authentic. The original treaty is to be deposited in the archives of the United States, Great Britain and the U.S.S.R.

The International Development Association

In 1968, the Executive Directors of IDA agreed to a replenishment of its funds by \$1.2 billion, of which the share of the United States was to be \$480 million spread over a three year period. On July 16, 1968, the House Banking and Currency Committee favorably reported HR 16775 authorizing the \$480 million contribution. The Senate Foreign Relations Committee, on October 11, 1968, reported an amended version of the bill, S. 3378, making the contribution contingent upon a matching contribution by the World Bank. No further action was taken in the 90th Congress because of opposition to further expenditures owing to the balance-of-payments problem and the Vietnam war. The Senate Foreign Relations Committee in

the 91st Congress also was considering the administration's request for \$200 million to establish a soft loan fund for the Asian Development Bank. This ran into even greater opposition than the contribution to IDA.

On March 12, the House passed H.R. 33, authorizing the contribution of \$480 million to IDA. Chairman Otto E. Passman of the Subcommittee on International Operations of the House Appropriations Committee said that the bill authorized foreign aid of the very worst sort because the United States would lose control over its contribution. The Senate Foreign Relations Committee ordered H.R. 33 favorably reported, and it was passed by the Senate on May 14 (P.C. 91-14).

Diplomatic Recognition

The Senate Foreign Relations Committee held a hearing on June 17 on S.Res. 205. The Resolution states that the extension of diplomatic recognition to a country "does not imply that the United States necessarily approves of the form, ideology or policy of that foreign government." This resolution was introduced on May 27 by Senator Alan Cranston and cosponsored by Senator George D. Aiken, the ranking Republican on the committee. Senator Cranston said that the policy of withholding recognition in order to influence political events was "doomed to failure . . . did not isolate the Soviet Union . . . Red China . . . non-recognition leads to a lack of communication with the very people it is most important for us to talk to. . . ." The Acting Legal Adviser informed the committee of the State Department's approval of the resolution. Dean Adrian S. Fisher, a former Legal Adviser and Reporter of the American Law Institute's Restatement of Foreign Relations Law, testified in favor of the resolution.

The Committee in reporting the resolution noted that it deals only with the implication of recognition and does not set forth standards for determining whether recognition should be extended. It also stated that the resolution was not intended to facilitate the recognition of Communist China.

The resolution was passed by a vote of 77 to 3 on September 25.

Commitments Abroad

Senator J. W. Fulbright, Chairman of the Foreign Relations Committee, on July 31, 1967, introduced S. Res. 187, which requested the President to commit troops overseas only with the consent of Congress. The resolution was approved by the Foreign Relations Committee, but was not brought to a vote in the 90th Congress.

Early in the first session of the 91st Congress, the Foreign Relations Committee established an ad hoc subcommittee on U.S. Security Agreements and Commitments Abroad, chaired by Senator Stuart Symington. Hearings were conducted on negotiations with Spain on renewal of military base rights. Senator Fulbright reintroduced his resolution on February 5.

On April 16, the committee reported a National Commitments Resolution (S. Res. 85) declaring that any commitment to a foreign power "necessarily and exclusively" should result from affirmative action by both legislative and executive branches. During five days of debate many members spoke in favor of the resolution. Opinion was divided on its scope and the definition of "national commitments."

Senator Fulbright called the resolution "most important" and said that there was "almost no restraint" on the President's power "to commit the country to dangerous and often irreversible courses of action in foreign policy."

The final form of the resolution was a compromise between a defeated amendment offered by Senators Karl E. Mundt and Thomas J. Dodd and the original Fulbright Resolution. It was offered by Senator John Sherman Cooper with the endorsement of Senators Fulbright and Mansfield and passed the Senate on June 25 by a vote of 70 to 16. The resolution reads:

WHEREAS Accurate definition of the term "national commitment" in recent years has become obscured, Now, therefore, be it

Resolved that a national commitment for the purpose of this resolution means the use of the armed forces on foreign territory, or a promise to assist a foreign country, government or people by the use of the armed forces or financial resources of the United States, either immediately, or upon the happening of certain events, and

That it is the sense of the Senate that a national commitment by the United States results only from affirmative action by the Legislative and Executive Branches of the United States Government by means of a treaty, statute, or concurrent resolution of both Houses of Congress specifically providing for such commitment.

The resolution has no effect as law and is only an admonition to the President. It does not alter existing arrangements with foreign countries. Yet it could have a profound effect on future foreign policy.

Military Programs in Latin-America

The Subcommittee on Western Hemisphere Affairs of the Senate Foreign Relations Committee began hearings on June 24 which the Chairman, Senator Frank Church, said were designed to re-examine the role played by Latin-America in hemispheric defense, the influence of the United

States on Latin-American military establishments, the extent of the current threat to external security in the region, and the net political impact of United States military policies.

East-West Trade and Export Controls

The Nixon Administration requested the Congress to re-enact, for a five year period, the twenty year old Export Control Act, due to expire on June 30. S. 813 and H.R. 4293 were introduced for that purpose.

S. 1940, introduced by Senator Edmund S. Muskie, and sponsored by Senators Walter F. Mondale, Robert W. Packwood and Harrison A. Williams, Jr., would have replaced export control with a liberalized regulation of only items having a military use and freeing items of "economic importance" from control.

S. 2283, introduced by Senator Warren G. Magnusson and twenty-three others as a companion to S. 1940, would have given the President authority to grant most favored national tariff treatment to imports from communist countries that provide basic protection for United States commercial interests such as patents and royalties. The authority would not extend to Red China, North Korea, North Vietnam, Cuba or East Germany.

On June 12, Senator Edward W. Brooke introduced a compromise bill (S. 2390), and on June 26 and 27 the Senate and the House passed a joint resolution extending the Export Control Act until August 30.

The subcommittee on International Finance of the Senate Banking and Currency Committee reported the compromise bill to the full committee with a provision that would have abolished the 50-50 cargo requirements established in 1963 under which half of all wheat exported to the Soviet Union and Eastern Europe and half of all feed grain to the Soviet Union be shipped in United States flag vessels. This provision was objected to as harmful to the merchant fleet, and on July 24 the full committee reported S. 2696, a bill without that provision which superseded both S. 1940 and S. 2390.

The House passed H.R. 4293 on October 16 after rejecting several amendments designed to align the bill with S. 2696 which would expand trade in peaceful goods with all nations.

The Senate accepted an amendment by Senator Walter F. Mondale substituting the more liberal language of S. 2696 for the restrictive language of H.R. 4293. The Senate then passed the bill. After the bill went to conference twice, the second conference report was accepted by both houses on December 23 in the last legislative action of the first session.

As enacted, H.R. 4293 is entitled "The Export Administration Act." It

continues until June 30, 1971 authority for the regulation and control of exports and declares Congressional policy encouraging trade, and the application of controls.

Foreign Aid

The administration's request (H.R. 11792) was for \$2,205,400,000 in economic assistance, \$375 million in military assistance and \$75 million to establish an Overseas Private Investment Corporation to promote investment, render pre-investment assistance, supply investment insurance against political risks, and supply investment financing. In hearings before the House Foreign Affairs Committee, several members indicated a lack of public support for foreign aid.

On October 30, the Committee ordered reported a clean bill, H.R. 14580, which extended the foreign assistance program through June 30, 1971 and authorized \$1,622,525,000 in economic assistance and \$350 million in military assistance for fiscal year 1970. The House passed the bill on November 20 and the Senate approved it on December 19.

The authorization is the lowest in the history of the foreign aid program. The appropriation bill, H.R. 15149, to fund the program ran into a roadblock of proposals to include military aid to Nationalist China and South Korea and failed of passage prior to adjournment. A rider was attached to a supplemental appropriation bill, H.R. 15209, making a continuing appropriation at the 1969 level.

Oil Imports Policies

The subcommittee on Anti-trust and Monopoly of the Senate Judiciary Committee, with Senator Philip A. Hart as Chairman, conducted hearings to lay a basis for recommending changes in the government's protectionist policy for the oil industry. Economists specializing in petroleum matters were generally critical of oil import quotas. Spokesmen for the Chemco Group of nine companies—Union Carbide Corp., Celanese Corp., Dow Chemical, Monsanto, E. I. duPont de Nemours, Eastman Kodak, National Distillers, Olin Matheson and Publiker Industries—told the subcommittee that unless restrictions were loosened they will have to build new plants abroad in order to compete with foreign firms.

Ocean Space

A subcommittee on Ocean Space of the Senate Foreign Relations Committee, with Senator Claiborne Pell as chairman, began hearings in July on S. Res. 33 concerning "Principles Governing the Use of Ocean Space."

S. Res. 33 states:

1. Ocean space should not be subject to national appropriation.
2. Nations should bear international responsibilities for national activity in ocean space.
3. The sea bed should be used for peaceful purposes only.
4. A coastal state has a special interest in conserving the natural resources of the sea bed adjacent to its territory.
5. Activities should be governed by a licensing authority designated by the U.N. and policed by a Sea Guard.

S. Res. 33 was introduced several days after the January 1969 report, "Our Nation and the Sea," by the Commission on Marine Science, Engineering and Resources established by Congress in 1966.

The Subcommittee on Oceanography of the House Committee on Merchant Marine and Fisheries held hearings on the report of the commission. Milnes B. Schaefer of the Scripps Institute of Oceanography, and Director of the Institute of Marine Resources of the University of California, said that the ideal federal organization to handle aspects of atmospheric and terrestrial environment would be a Department of Natural Resources and Environment with subdepartments for the ocean, atmosphere and terrestrial resources. S. Res. 33 was not passed at the first session.

Miscellaneous

On January 28, H.R. 4813 to extend the United States Fishing Fleet Improvement Act (P.L. 88-498) and to increase the authorization from \$10 million to \$20 million per year was introduced at the request of the administration. It passed the House by a voice vote on August 12. The Senate Commerce Committee held hearings and the outlook is favorable for enactment at the second session.

H.R. 11711 which passed the House on October 6, and the Senate on December 15, amended the International Claims Settlement Act of 1949 to extend the time within which the Foreign Claims Settlement Commission is required to complete the processing of claims against Cuba to July 6, 1972.

S.J. Res. 90 which passed the Senate on June 18 and the House on December 15, authorizes the Secretaries of State and Commerce to arrange to convene an international conference to negotiate a Patent Cooperation Treaty and to authorize an appropriation of \$175,000.

S. Res. 179 which was agreed to on November 10, stated the sense of the Senate to be that the United States should support, participate in and offer to host the 1972 United Nations Conference on Human Environment.

Other Treaties

The Senate gave its consent to the ratification of eight treaties. In addition to the Treaty on the Nonproliferation of Nuclear Weapons, noted above, the most significant are:

Consular Convention with Belgium replaces a convention of 1880 and deals with consular relations between the United States and Belgium. Resolution of ratification was agreed to November 10. (Ex. F, 91-1).

Convention on Offenses Committed on Board Aircraft establishes international rules providing for continuity of jurisdiction with respect to crimes and other offenses committed on board aircraft engaged in international flights. (Ex. L, 90-2) Resolution of ratification was agreed to May 13.

Convention on Conduct of Fishing Operations in the North Atlantic establishes uniform rules to govern fishing in the area north of a line drawn between Gibraltar and Cape Hatteras. (Ex. D, 91-1).

Vienna Convention on Consular Relations and Optional Protocol Concerning the Compulsory Settlement of Disputes signed at Vienna on April 24, 1963. (Ex. E, 91-1). This is the first multilateral agreement regulating consular relations between States. The accompanying protocol provides for the compulsory settlement of disputes arising out of the interpretation or application of the convention. Resolution of ratification was agreed to October 22.

The Senate's National Commitments Resolution, asserting the constitutional partnership of the legislative and executive branches in the initiation of military and financial assistance to a foreign belligerent, is a notable accomplishment of the first session of the 91st Congress. And if the mood of the first session extends through the second, the 91st Congress could be known as the one in which the Pentagon's budget requests ceased to be sacrosanct and the trend of the Defense Department's encroachment on the conduct of foreign relations was arrested.